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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Dr. Carole J. Barry--Reconsideration

**File:** B-271248.2

**Date:** October 16, 1996

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Dr. Carole J. Barry for the protester.

Richard Brown, Esq., and Michael Colvin, Department of Health and Human Services, for the agency.

Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Request for reconsideration is denied where protester has not shown that prior decision contained errors of fact or law, nor has it presented information not previously considered.
  2. Protester's exclusion from portion of a hearing at which witnesses testified concerning protected material does not provide a basis for reconsideration; protester was provided with a redacted copy of the full hearing transcript, and the diminution in the protester's access to the protest record resulted from the protester's last-minute decision to discontinue the services of its attorney who had been admitted to a protective order.
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## DECISION

Dr. Carole J. Barry requests reconsideration of our decision, Dr. Carole J. Barry, B-271248, June 28, 1996, 96-1 CPD ¶ 292, in which we denied her protest of the evaluation of proposals and the resulting award of a contract to Psychiatric Associates of New Mexico, Inc., under request for proposals (RFP) No. 96-01/LBB, issued by the Department of Health and Human Services, Albuquerque Area Indian Health Service. In her request for reconsideration, Dr. Barry argues that our Office improperly denied her contentions that the proposals were improperly evaluated, and that our Office conducted a hearing in connection with her protest in an unfair manner.

We deny the request for reconsideration.

The protester in essence repeats arguments that she made previously concerning the agency's evaluation of the proposals, and expresses disagreement with our decision. Under our Bid Protest Regulations, to obtain reconsideration, the

requesting party must show that our prior decision contains either errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.14(a) (1996); see Richards Painting Co.--Recon., B-232678.2, May 19, 1989, 89-1 CPD ¶ 481. Dr. Barry's repetition of arguments made during our consideration of its original protest and mere disagreement with our decision do not meet this standard. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

Dr. Barry also argues that a hearing held in connection with this protest was unfairly conducted. Specifically, Dr. Barry objects that she was not allowed to be present during the testimony of the agency's witnesses, and was not afforded an opportunity to cross-examine the witnesses.

Our Bid Protest Regulations provide that our Office may conduct a hearing in connection with a protest, 4 C.F.R. § 21.7(a), and also that prior to the hearing we may conduct a pre-hearing conference to discuss and resolve matters such as the format of the hearing, the procedures to be followed, the issues to be considered, and the witnesses who will testify. 4 C.F.R. § 21.7(b).

Our Office decided that this case was appropriate for a hearing, which we scheduled for Monday, April 29, 1996. The decision was made to hold the hearing in Albuquerque, New Mexico, as requested by protester's counsel, because that was where the protester, her counsel (who had been admitted to a protective order issued by our Office in connection with the protest), and the agency's witnesses were situated. The General Accounting Office hearing official held a pre-hearing conference by telephone on Thursday, April 25, with counsel for the protester and agency representatives. One of the issues that arose during this conference was the protester's ambivalence concerning whether to continue to retain the assistance of counsel in pursuing the protest. The hearing official explained that because a protective order had been issued and the hearing would cover protected material, the issue of whether or not the protester would proceed with counsel would affect the manner in which the hearing was conducted; therefore, this issue needed to be resolved immediately. The pre-hearing conference was interrupted and the protester's counsel was given time to confer with her client to resolve this matter. When the pre-hearing conference resumed, the hearing official was advised that the protester had decided to continue to retain the assistance of counsel in her pursuit of the protest.

On the day of the hearing, Dr. Barry and her spouse/representative appeared without counsel. Because the protester elected, contrary to her prior assurances, to appear without counsel admitted to the protective order at a hearing at which agency witnesses were expected to testify with respect to protected information pertaining to the awardee's proposal, the hearing official decided to proceed with the hearing by questioning the agency's witnesses herself. Dr. Barry and her

representative were not allowed to be present during the testimony of the agency's witnesses. Dr. Barry subsequently was given an opportunity to answer questions posed by the hearing official and the agency's counsel concerning her proposal, and to make a statement on the record during which she objected to the conduct of the hearing. Dr. Barry was later provided with a redacted transcript of the entire hearing, and submitted comments based on this transcript.

The hearing official's approach was entirely fair and appropriate. The format of a hearing and the degree of participation in a hearing by a party to a protest may vary depending on the issues involved, whether or not the hearing is protected, and whether the protester is represented by counsel admitted to a protective order. Here, during the pre-hearing conference the hearing official arranged a format, agreed to by all of the parties, in which the protester's counsel, admitted to the protective order, would be present for the direct testimony of the agency's witnesses, and then would have an opportunity for cross-examination. The protester's own attendance at the hearing was to have been limited because of the fact that the hearing concerned protected material. The protester's last-minute and previously undisclosed decision to appear at the hearing without counsel admitted to a protective order meant that the hearing format earlier agreed to no longer was appropriate. The hearing official clearly acted reasonably in such circumstances in then deciding to restructure the hearing format to allow the pertinent issues to be covered in an expeditious manner, including questioning the agency's witnesses herself and later providing Dr. Barry a redacted transcript of the entire hearing. In sum, any diminution in the protester's access to the hearing testimony was solely the result of the protester's decision to appear without representation by previously admitted counsel. The protester's objection to the conduct of the hearing provides no basis for reconsideration. See Department of State--Recon., B-243974.4, May 18, 1992, 92-1 CPD ¶ 447.

The request for reconsideration is denied.

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